

**FPA Medical Management, Inc. and United Health Care Employees, NUHHCE, AFSCME, AFL-CIO.** Case 28-CA-14461

October 22, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on June 17, 1997, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on July 28, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 28-RC-5480. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On September 15, 1997, the General Counsel filed a Motion for Summary Judgment. On September 17, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 1, 1997, the Charging Party Union filed a brief in support of the motion, and on October 2, 1997, the Respondent filed an opposition to the motion.

**Ruling on Motion for Summary Judgment**

In its answer and response, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objection to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.<sup>1</sup> The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to

<sup>1</sup>The Respondent's objection alleged that supervisory personnel, i.e., physicians employed by the Respondent, improperly campaigned on behalf of the Union in the subject support staff unit. The Regional Director recommended that the Respondent's objection be overruled on the ground that the status of the physicians had already been fully litigated in *Thomas-Davis Medical Centers*, Case 28-RC-5449, in which the physicians were found not to be supervisors, and the Board adopted the Regional Director's recommendation by unpublished decision dated June 10, 1997. We note that the Board also subsequently granted the General Counsel's Motion for Summary Judgment and ordered the Respondent to bargain with the Union with respect to the physicians involved in *Thomas-Davis*. See 324 NLRB 29 (1997).

reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>2</sup> On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent FPA Medical Management, Inc. is now, and has been at all times material, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware. During the 12-month period preceding the Stipulated Election Agreement in the representation proceeding, the Respondent derived gross revenue in excess of \$250,000 from its operations and, during the same period, purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside of the State of Arizona.<sup>3</sup>

The Respondent admits and we find that the Respondent is now, and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held February 13, 1997, the Union was certified on June 10, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

<sup>2</sup>Having granted the General Counsel's Motion for Summary Judgment, we find it unnecessary to address the General Counsel's motion to strike certain portions of the Respondent's answer.

<sup>3</sup>The foregoing commerce facts were stipulated to by the Respondent in a Stipulated Election Agreement executed in the representation proceeding. Although the Respondent's answer in the instant case denies similar facts alleged in the complaint, the Respondent's stipulation to those facts in the representation proceeding precludes the Respondent from contesting the same facts in the instant proceeding. To the extent the Respondent's answer also attempts to assert additional facts regarding certain stock transactions involving the Company effective June 27 and November 29, 1996, prior to the Respondent's execution of the Stipulated Election Agreement, we agree with the General Counsel that the Respondent has failed to show how those facts are relevant to this proceeding or, even assuming they are relevant, why they could not have been raised in the representation proceeding. Finally, as indicated infra, the Respondent's answer admits the ultimate jurisdictional allegation of the complaint, and the Respondent's response specifically states that the Respondent is not opposing the General Counsel's motion on the basis of the commerce allegations.

All Medical Records Techs (I, II), Office Specialist/Clerks, Lead Office Specialist/Clerks, Lead Medical Records Techs, Pharmacy Refill Techs, Lead Medical Techs, LPNs, Lead LPNs, Medical Assistants (I, II), EKG Techs, Patient Representatives, Mail Clerks, Outcomes Facilitators, Patient Services Coordinators, Ultrasonographers, Radiology Techs, Transcript Clerks-Radiology, Medical Transcriptionists-Radiology, Film Librarians, CT Technologists, Radiology Aides (I, II), Lead Film Librarians, Insurance Specialists, Financial Analysts, Lead Insurance Specialists, Financial Counselors, Lead Financial Counselors, Reimbursement Analysts, Ophthalmic Assistants, Ophthalmic Techs (non-certified), Optical Assistants I, Controllers, CBX Operators, Maintenance Engineers, Electricians, Maintenance Assistants, Training Representatives, Audiology Techs, Audiology Assistants, Opticians (I, II), Central Supply Techs, Laundry Workers/Central Supply, Lead Central/Supply Techs and Medical Transcriptionists employed by the Respondent at its Tucson and Green Valley, Arizona facilities; excluding all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### B. *Refusal to Bargain*

By letter dated June 13, 1997, the Union requested the Respondent to bargain, and, by letter dated June 24, 1997, the Respondent refused. We find that this refusal constitutes an unlawful refusal to recognize and bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after June 24, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the

Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, FPA Medical Management, Inc., Tucson and Green Valley, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Health Care Employees, NUHHCE, AFSCME, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All Medical Records Techs (I, II), Office Specialist/Clerks, Lead Office Specialist/Clerks, Lead Medical Records Techs, Pharmacy Refill Techs, Lead Medical Techs, LPNs, Lead LPNs, Medical Assistants (I, II), EKG Techs, Patient Representatives, Mail Clerks, Outcomes Facilitators, Patient Services Coordinators, Ultrasonographers, Radiology Techs, Transcript Clerks-Radiology, Medical Transcriptionists-Radiology, Film Librarians, CT Technologists, Radiology Aides (I, II), Lead Film Librarians, Insurance Specialists, Financial Analysts, Lead Insurance Specialists, Financial Counselors, Lead Financial Counselors, Reimbursement Analysts, Ophthalmic Assistants, Ophthalmic Techs (non-certified), Optical Assistants I, Controllers, CBX Operators, Maintenance Engineers, Electricians, Maintenance Assistants, Training Representatives, Audiology Techs, Audiology Assistants, Opticians (I, II), Central Supply Techs, Laundry Workers/Central Supply, Lead Central/Supply Techs and Medical Transcriptionists employed by the Respondent at its Tucson and Green Valley, Arizona facilities; excluding all other employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Tucson and Green Valley, Arizona,

copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 17, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

<sup>4</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT refuse to bargain with United Health Care Employees, NUHHCE, AFSCME, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All Medical Records Techs (I, II), Office Specialist/Clerks, Lead Office Specialist/Clerks, Lead Medical Records Techs, Pharmacy Refill Techs, Lead Medical Techs, LPNs, Lead LPNs, Medical Assistants (I, II), EKG Techs, Patient Representatives, Mail Clerks, Outcomes Facilitators, Patient Services Coordinators, Ultrasonographers, Radiology Techs, Transcript Clerks-Radiology, Medical Transcriptionists-Radiology, Film Librarians, CT Technologists, Radiology Aides (I, II), Lead Film Librarians, Insurance Specialists, Financial Analysts, Lead Insurance Specialists, Financial Counselors, Lead Financial Counselors, Reimbursement Analysts, Ophthalmic Assistants, Ophthalmic Techs (non-certified), Optical Assistants I, Controllers, CBX Operators, Maintenance Engineers, Electricians, Maintenance Assistants, Training Representatives, Audiology Techs, Audiology Assistants, Opticians (I, II), Central Supply Techs, Laundry Workers/Central Supply, Lead Central/Supply Techs and Medical Transcriptionists employed by us at our Tucson and Green Valley, Arizona facilities; excluding all other employees, guards and supervisors as defined in the Act.

FPA MEDICAL MANAGEMENT, INC.